

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

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|------------------------------|---|--------------------------|
| IN RE: |) | |
| |) | |
| DAVID STEWART PIERCE |) | CASE NO. 11-80296 |
| NANCY AHLGREN PIERCE, |) | CHAPTER 13 |
| |) | |
| Debtors. |) | |

**MOTION FOR, AMONG OTHER THINGS,
RELIEF FROM THE AUTOMATIC STAY**

COMES NOW Ally Financial f/k/a GMAC, Inc. (herein "Ally"), pursuant to 11 U.S.C. §362(d), and moves for relief from the automatic stay herein, or, in the alternative, applies to the Court for adequate protection of its interest in the below-described vehicle, as follows:

1. The Debtors commenced this case by petition filed on or about February 17, 2011.
2. On or about December 29, 2007, the Debtors leased a 2008 Cadillac CTS, VIN # 1G6DF577380150442 (herein the "Vehicle"), pursuant to a lease agreement of even date (herein the "Lease Agreement"). A copy of the Lease Agreement is attached hereto marked Exhibit 1.
3. Ally is the owner of the Vehicle. A copy of the Certificate of Title evidencing same is attached hereto marked Exhibit 2.
4. By its terms, the Lease Agreement matured on July 28, 2011, at which time the Lease Agreement requires the Debtors to return the Vehicle to Ally. The Debtors failed and refused to return the Vehicle to Ally notwithstanding the expiration of the lease term. The payments due under the Lease Agreement are also past due for the June 29, 2011 payment of \$665.69, accumulated late charges totaling \$943.02, and personal property taxes totaling \$1,568.69, for a total arrearage of \$3,177.54.

5. The Lease Agreement is a true lease within the meaning of 11 U.S.C. §365 and thus there is no equity to the Debtor or the estate in the Vehicle.

6. Under these circumstances, there is good cause to grant Ally relief from the automatic stay under 11 U.S.C. §362(d).

7. If Ally is not permitted to foreclose its ownership interest in the Vehicle, it will suffer irreparable injury, loss and damages.

8. Ally also is entitled to an administrative expense claim in the Chapter 13 Plan pursuant to 11 U.S.C. §503(b)(1)(A) for the reasonable value of the post-petition use of the Vehicle by the for which it has not been compensated at the time the Vehicle is actually recovered by Ally, for which recovery is also hereby sought.

9. Due to the nature of the Vehicle as being easily moved, easily secreted and easily damaged, Ally also hereby requests that any order granting the relief requested herein be immediately effective.

WHEREFORE, Ally moves the Court for the following relief:

1. The Court enter an Order pursuant to 11 U.S.C. §362(d) and Rule 4001(a)(3) immediately lifting the automatic stay to permit Ally to foreclose its ownership interest in the Vehicle in accordance with the Lease Agreement and applicable law.

2. The Debtors be ordered to immediately release the Vehicle to Ally or advise it of the location of the Vehicle and the name, address, and telephone number of any third party in possession of same.

3. Ally be allowed to file an administrative expense claim in the Chapter 13 Plan pursuant to 11 U.S. C. §503(b)(1)(A) for the reasonable value of the post-petition use of the Vehicle

by the Debtors for which it has not been compensated at the time the Vehicle is actually recovered by Ally, at the monthly rate called for under the Lease Agreement.

4. Ally have such other and further relief as to the Court seems just and proper.

This the 17th day of August, 2011.

KIRSCHBAUM, NANNY, KEENAN & GRIFFIN, P.A.

By: s/ Pamela P. Keenan
Pamela P. Keenan
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day, she served a copy of the foregoing on the parties in interest either electronically or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service, in a postage-paid envelope, addressed as follows:

David and Nancy Pierce
3503 Shady Creek Dr.
Durham, NC 27713

John T. Orcutt
6616-203 Six Forks Rd.
Raleigh, NC 27615

Richard M. Hutson, II
PO Box 3613
Durham, NC 27702

This the 17th day of August, 2011.

s/ Gwen T. Best
Gwen T. Best
Paralegal